

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**BETTY WOOD and  
ROBERT WOOD,**

**Plaintiffs,**

**vs.**

**CIVIL ACTION  
No. 04-2063-GTV**

**MIDWEST DIVISION MMC,  
LLC., et al.,**

**Defendants.**

**MEMORANDUM AND ORDER**

Plaintiffs Betty and Robert Wood bring this medical malpractice action against Defendants Midwest Division MMC, LLC.; Alexander Davis, M.D.; James M. Mays, M.D.; and Ian L. Belson, D.O., pursuant to the court's diversity jurisdiction, 28 U.S.C. § 1332(a). In Count I of Plaintiffs' Third Amended Complaint, Plaintiff Betty Wood claims that Defendants' negligent care caused her to suffer a major stroke. She requests damages in excess of \$75,000 for her medical expenses and her alleged physical and mental suffering. In Count II, Plaintiff Robert Wood claims that he has "suffered the loss of society, companionship, consortium, support and services of his lawful spouse" and that he has incurred, and will continue to incur, substantial medical expenses as a result of Defendants' negligent conduct.

This action is before the court on Defendant James M. Mays, M.D.'s Motion to Dismiss Robert Wood as Party Plaintiff (Doc. 60). For the reasons set forth below, Defendant Mays's

motion is granted in part, and denied in part.

Defendant Mays contends that Plaintiff Robert Wood is not a proper party to this action due to the derivative nature of his consortium claim in Count II of Plaintiffs' Third Amended Complaint. Specifically, pursuant to Kan. Stat. Ann. § 23-205, Plaintiff maintains that all rights of recovery for consortium are vested in Plaintiff Betty Wood for the benefit of her husband. That statute, in pertinent part, reads:

Where, through the wrong of another, a married person shall sustain personal injuries causing the loss or impairment of his or her ability to perform services, the right of action to recover damages for such loss or impairment shall vest solely in such person, any recovery therefor, so far as it is based upon the loss or impairment of his or her ability to perform services in the household and in the discharge of his or her domestic duties, shall be for the benefit of such person's spouse so far as he or she shall be entitled thereto.

Kan. Stat. Ann. § 23-205. Thus, Kansas law provides that damages for loss of consortium, comfort, services and society are recoverable by Plaintiff Betty Wood for the benefit of Plaintiff Robert Wood. Plaintiff Robert Wood may not maintain a separate cause of action for loss of consortium damages. Lupton v. Torbey, 548 F.2d 316, 320 (10th Cir. 1977); Annis v. Butler Mfg. Co., 715 F. Supp. 328, 330 (D. Kan. 1989). Moreover, Plaintiffs' response concedes that Plaintiff Robert Wood's request for loss of consortium damages should be stricken.

Plaintiffs, however, argue that Plaintiff Robert Wood should remain a named party to this action. In particular, Plaintiffs maintain that Count II is not only a claim for loss of consortium, but also a claim for the medical expenses Plaintiff Robert Wood has incurred and will continue to incur for Plaintiff Betty Wood's medical care and treatment. The court agrees. Kan. Stat. Ann. § 23-205 does not preclude these claims for damages. Under Kansas law, Plaintiff Robert Wood

has standing to bring a claim for medical expenses as a result of his wife's injuries. See Topliff v. Gross, No. 94-1415, 1997 WL 321291, at \*3 (D. Kan. May 7, 1997) (husband could remain a named party to the extent he incurred any expenses due to his wife's claims against the defendant); Hinson v. Titan Tool, Inc., No. 93-1370-FGT, 1996 WL 473873, at \*3 (D. Kan. May 31, 1996) (wife permitted to claim damages for "the value of nursing services she has rendered in the care of her injured husband"); Biby v. Halstead Hosp. Inc., No. 92-1042-MLB, 1993 U.S. Dist. LEXIS 21089, at \*5 (D. Kan. Nov. 22, 1993) (husband allowed to seek recovery for travel expenses and loss of income as a result of wife's treatment); Kelley v. Lee, 461 P.2d 806, 810 (Kan. 1969) (concluding that "medical expenses due to a tortious injury to the wife are recoverable in an action by the husband").

The court therefore concludes that Plaintiff Robert Wood may remain a named party to seek damages for Plaintiff Betty Wood's present and future medical expenses, but not for loss of consortium damages. Accordingly, the court grants Plaintiffs ten days from the date of this order to file a fourth amended complaint consistent with this order.

IT IS, THEREFORE, BY THE COURT ORDERED that Defendant James M. Mays, M.D.'s Motion to Dismiss Robert Wood as Party Plaintiff (Doc. 60) is granted in part, and denied in part.

IT IS FURTHER ORDERED that Plaintiffs shall have ten days from the date of this order to file a fourth amended complaint consistent with this order.

Copies of this order shall be transmitted to counsel of record.

**IT IS SO ORDERED.**

Dated at Kansas City, Kansas, this 11th day of January 2005.

/s/ G.T. VanBebber  
G. Thomas VanBebber  
United States Senior District Judge